



## **CITY OF NEWPORT BEACH**

### **ECONOMIC DEVELOPMENT COMMITTEE**

## **AGENDA**

**MEETING DATE:** Wednesday, February 22, 2006  
**TIME:** 8:00-9:00 A.M. *Please arrive 5 min. prior*  
**PLACE:** City of Newport Beach Council Chambers

Roll Call and Introductions

### **CONSENT CALENDAR**

(All matters listed under CONSENT CALENDAR are considered to be routine and will all be approved by one motion in the form listed below. The EDC members have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the Committee votes on the motion unless members of the Committee, staff, or the public request specific items to be discussed and/or removed from the Consent Calendar for separate action.)

1. Approval of Minutes of January 18, 2006 (*Attachment*)
2. Progress Report (*handout at meeting*)

### **ITEMS REMOVED FROM THE CONSENT CALENDAR**

### **DISCUSSION ITEMS**

1. Report on Newport Beach Film Festival – Gregg Schwenk, Executive Director
2. Report on Newport Harbor Nautical Museum – David W. Muller, Executive Director
3. Possible November Ballot Items – Briefing (*Attachment*) (*Attachment*)
4. EQAC Representative's Report

### **ITEMS FOR A FUTURE AGENDA**

### **PUBLIC COMMENTS**

### **ADJOURNMENT**

**NEXT EXECUTIVE COMMITTEE MEETING: Wednesday, March 1<sup>st</sup>, 2006**  
**8:00 A.M. – NEWPORT BEACH CHAMBER OF COMMERCE**  
**NEXT REGULAR MEETING: Wednesday, March 22<sup>nd</sup>, 2006**

**\*\*\* Note Date Change \*\*\***

**8:00-9:00 A.M. – CITY COUNCIL CHAMBERS**

RECEIVED

September 16, 2005

'05 SEP 16 P12:56

LaVonne Harkless, City Clerk  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92663-3884

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CITY OF NEWPORT BEACH

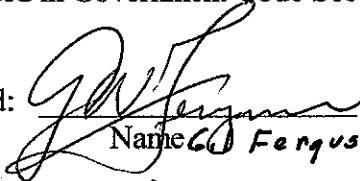
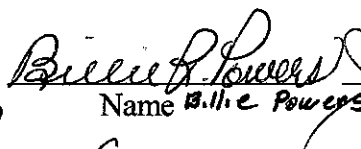

### NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Newport Beach for the purpose of submitting to the voters a proposed amendment to the Municipal Code of the City of Newport Beach. The previous initiative filed on August 18, 2005 is withdrawn and replaced by this revised initiative.

In addition, the undersigned request, pursuant to California Elections Code § 9203, that a ballot title and summary be prepared with respect to the proposed measure, a copy of which is being filed herewith.

The proponents acknowledge that it is a misdemeanor for the signatures on an initiative petition to be used for any purpose other than for qualification of the initiative, except as provided in Government Code Section 6253.5

Signed:

		
Name <u>G. J. Ferguson</u>	Name <u>Billie Powers</u>	Name <u>John B. Holph</u>
<u>2105 Descanso</u>	<u>241 Canal St.</u>	<u>2214 Holly Lane</u>
Address	Address	Address
<u>Newport Beach</u>	<u>Newport Beach</u>	<u>Newport Beach</u>

**INITIATIVE MEASURE TO BE SUBMITTED  
DIRECTLY TO THE VOTERS**

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The people of the City of Newport Beach do ordain as follows:

The following Chapter is added to the Newport Beach Municipal Code:

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CITY OF NEWPORT BEACH

**Chapter 3.25      BORROWING AGAINST GENERAL FUND REVENUES FOR  
CONSTRUCTION OF PUBLIC IMPROVEMENTS.**

**3.25.010**      Voter approval shall be required prior to borrowing by the City to finance construction of public improvements, if such borrowing creates indebtedness payable from general fund revenues of the City.

**3.25.020 Purpose.** The purpose of this chapter is to give voters the right to approve all forms of public borrowing to finance construction of public improvements, such as a new city hall. This closes the loophole in the existing law that permits some forms of such borrowing without voter approval.

**3.25.030 Borrowing Defined.** As used in this chapter, "borrowing by the City to finance construction of public improvements" includes the use of tax-exempt lease transactions, installment sale transactions, notes, transactions involving certificates of participation, and all other forms of financing for the construction of public improvements, and includes borrowing by the City or any agency, quasi-public agency, corporation or other form of entity of which the City is a member or participant, for the purpose of financing the construction of public improvements.

**3.25.040 Voter Approval Defined.** "Voter approval shall be required" means that such indebtedness shall not be incurred without the prior affirmative votes of a majority of the electors voting on a borrowing proposal already approved by the City Council, at any election at which the question is submitted to the electors.

**3.25.050 Election Disclosures.** Election materials for proposed borrowing shall include sufficient information to inform the electorate of the substance of the proposed transaction and shall, at minimum, identify the public improvements to be funded, total principal to be paid, total amount and rate of interest, fees, payment terms, and an estimate of the total amount that would be paid over the life of the transaction.

**3.25.060 Application.** This chapter whenever adopted shall apply retroactively to the date the "Notice of Intent to Circulate Petition" was filed with the City Clerk. Any indebtedness for the construction of public improvements incurred by the City after that date shall be null and void unless approved by the voters pursuant to this chapter.

**3.25.070 Exceptions.** This chapter shall not apply to borrowing:

- (A) By bonded indebtedness of the type defined in Section 1109 of the City Charter, or
- (B) To finance construction of a public improvement if a court of competent jurisdiction has made an express finding and entered an order that construction of such improvement is mandatory, or
- (C) With a term of less than two years or in an amount less than three million dollars (\$3,000,000.), provided that any subsequent public borrowing to finance construction of the same public improvement shall require voter approval pursuant to this Chapter.

3.25.080 Severability. If any part of this initiative is declared invalid on its face or as applied to a particular case, such decision shall not affect the validity of the remaining parts, or their application to other cases. It is hereby declared that each part of this initiative would have been adopted irrespective of the fact that any one or more other parts be declared invalid.

3.25.090 Defense. The City shall vigorously defend this Chapter and its underlying initiative against any legal challenge.

3.25.100 Amendment. This chapter shall not be amended nor repealed except by a vote of the people.

{End of proposed amendment. But this initiative also includes Findings, as follows:}

Findings.

(A) Current law requires voters to approve public borrowing by a prior affirmative vote of 2/3 of the electors voting where such borrowing is in the form of bonded indebtedness which constitutes a general obligation of the City.

(B) New forms of borrowing have been created in order to avoid the requirement of a public vote. A common form of such new borrowing involves the use of a "tax-exempt lease" transaction. The essence of a tax-exempt lease transaction is that a government agency is borrowing funds from investors to finance the construction of a public improvement. The borrowed funds must be repaid in regular installments of principal and interest, just like funds borrowed through the issuance of municipal bonds.

(C) In a tax-exempt lease, a city-controlled agency obtains financing for the public improvement by selling debt securities called "certificates of participation". Investors who purchase these certificates are entitled to receive a proportionate share of payments made by the City to the city-controlled agency which "owns" the public improvement and "leases" the improvement to the City.

(D) Structuring a major capital project financing as a tax-exempt lease merely provides the legal authority for the borrowing to avoid the constitutional and statutory debt restrictions. Regardless of the method of financing, the voters should have the power to approve public borrowing before the City assumes any form of long-term indebtedness to finance public improvements.

(E) It is the intent of the voters that the financing of public improvements without voter approval through tax-exempt leases and all other forms of public borrowing that creates indebtedness payable from the general fund revenues of the City should cease immediately and that any measure providing for voter approval of such public borrowing shall apply retroactively to the date the Notice of Intent to Circulate Petition on the measure is filed with the City.

INITIATIVE MEASURE TO ADD CHAPTER 3.25 TO THE NEWPORT BEACH MUNICIPAL CODE AND REQUIRE VOTER APPROVAL BEFORE THE CITY IS AUTHORIZED TO BORROW TO FINANCE THE CONSTRUCTION OF PUBLIC IMPROVEMENTS

The proposed Measure, if approved, would add Chapter 3.25 to the Newport Beach Municipal Code that will require approval of a majority of voters before the City is authorized to borrow money to finance the construction of public improvements. The Measure defines "borrowing by the City to finance public improvements" to include the use of tax exempt lease or installment sales transactions, or transactions involving certificates of participation and all other forms of financing or borrowing to construct public improvements.

By its terms, the Measure would apply retroactively, causing any indebtedness to finance a public improvement after September 16, 2005 to be null and void unless approved by the voters pursuant to the provisions of Chapter 3.25. The Measure also requires the election materials to inform the electorate of the substance of the proposed transaction and shall, at a minimum identify the public improvements to be funded, total principal to be paid, total amount and rate of interest, fees, payment terms and estimate of the total amount to be paid over the life of the transaction.

The Measure would exempt from voter approval requirements (a) bonded indebtedness of the type defined in Section 1109 of the City Charter; or (b) financing for the construction of a public improvement if a court has entered an order that the construction of the improvement is mandatory; or (c) financing over a period of not more than 2 years or financings of less than \$3 million dollars.

The proposed Measure includes 5 "findings." If the proposed Measure is approved these findings would not become part of the City municipal code but do express the reasons and purpose behind the proposed Measure.

**Greenlight**  
**P.O. Box 3362**  
**Newport Beach, CA 92659**

**Notice of Intent to Circulate Petition**

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Newport Beach for the purpose of submitting to the voters a proposed amendment to the Municipal Code of the City of Newport Beach. The previous initiative filed on September 30, 2005 is withdrawn and replaced by this revised initiative. In addition, the undersigned request, pursuant to California Elections Code § 9203, that a ballot title and summary be prepared with respect to the proposed measure, a copy of which is being filed herewith.

The proponents acknowledge that it is a misdemeanor for the signatures on an initiative petition to be used for any purpose other than for qualification of the initiative, except as provided in Government Code Section 6253.5

Signed by proponents:

*Jean H. Watt*  
*4 Harbor Island*  
*Newport Beach*  
*CA 92660*

*Philip Lind*  
2601 Lighthouse Lane  
Corona del Mar, CA 92625

*THOMAS E. HYAN*  
*Thomas E. Hyans*  
*217 1st St.*  
*Newport Beach CA*  
*92663*

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CITY OF NEWPORT BEACH

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## INITIATIVE TO BE SUBMITTED DIRECTLY TO THE VOTERS

To the City Council of the City of Newport Beach: We, the undersigned registered voters of the City of Newport Beach present this petition to the City Council and request that the following amendment to the municipal code be adopted without alteration or else be submitted to a vote of the people.

The people of the City of Newport Beach do ordain as follows:

The Newport Beach Municipal Code shall be amended by adding the following new Chapter:

**.010 Purpose.** This Chapter gives voters the power to prevent Newport Beach from becoming an overbuilt and traffic-congested city by requiring preparation and Voter Approval of Specific Plans for Major Developments. The City's circulation system is already congested beyond current city standards and inadequate to support the current "As Built Condition" of the City. High-density developments and construction of increasingly larger buildings threaten the character and quality of neighborhoods throughout the City. Specific Plans will ensure better planning and provide voters with the information needed to make informed decisions about Major Development proposals.

**.020 Voter Approval of Major Development Projects.** A Specific Plan shall be prepared for all Major Development proposals. Following adoption by the City Council, Major Development Specific Plans shall be submitted to the voters for final approval.

**.030 Application.** This Chapter applies to all applications for Major Developments in the City of Newport Beach that have an Application Date later than the date the "Notice of Intent to Circulate this Petition" was filed with the City Clerk.

### **.040 Election Procedures.**

**.041.** City approval of a Major Development proposal shall be final only after its Specific Plan has been submitted to the voters and approved by a majority of those voting on it. Each Specific Plan for a Major Development proposal shall be submitted to a public vote as a separate and distinct ballot measure regardless of whether its approval by the City Council was combined with other Developments, projects or General Plan Amendments. Each Specific Plan for a Major Development shall be identified on the ballot in a manner that clearly identifies the project it applies to, i.e. "Specific Plan for XYZ Development". The City Council shall set any election required by this Chapter for the municipal election next following city council approval of the Major Development Specific Plan or by mutual agreement with the Proponent, the City Council may call a special election with the cost of the special election being shared by their mutual agreement. An advisory election prior to council approval of a Major Development Specific Plan does not satisfy the voter approval requirements of this Chapter.

**.042.** The vote required by this Chapter shall be in addition to all other applicable approval requirements for Major Development proposals, including environmental review. However, all subsequent approvals required to implement a Major Development Specific Plan approved by the voters in accordance with this Chapter shall be in substantial conformance with the Specific Plan submitted to the voters, and under no circumstances, shall a subsequent approval authorize greater traffic, density or intensity than was represented to the voters.

### **.050 Specific Plan Requirements.**

**.051.** Specific Plans required by this Chapter shall be prepared in accordance with Section 65450 et seq. of the Government Code and shall include all information deemed necessary by City Council or Planning Director. In addition, all Specific Plans for Major Developments shall include the following information:

- a. **Project Description.** Include a plot plan or diagram, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, fences and walks. Include drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings as they would appear upon completion.
- b. **Neighborhood Compatibility.** Describe the project's consistency or lack of consistency with existing Neighborhood uses, i.e. commercial, residential etc. To the extent the proposed project differs from

existing uses, identify the implementation measures including regulations that would be used minimize adverse neighborhood impacts.

- c. Summer Traffic Analysis. In addition to traffic studies otherwise required by the City, analyze the project's impact on peak traffic levels during the months of July and August. The analysis shall, at minimum, include a survey of existing traffic levels during July or August at a time and date the City's traffic engineer determines is best for determining peak summer traffic levels. Identify the implementation measures including regulations that would be used to minimize summer traffic impacts.
- d. Significant Increases in Traffic, Density or Intensity. Describe the Significant Increases in Traffic, Density or Intensity, as defined in this Chapter that would result from the Major Development proposal. Identify the implementation measures including regulations that would be used to minimize any adverse impacts.

.052. Where applicable, existing Specific Plans may be amended to include the additional sections required by this Chapter in lieu of preparing an entirely new specific plan. Voter approval of the amendment in accordance with this Chapter shall be required.

.053. To minimize delay for affected applicants, the City may process and approve discretionary applications required for a Major Development prior to a public vote on its Specific Plan, provided, however, that all approvals shall be provisional and only become final and effective if the applicable Specific Plan has been approved by the voters. If the applicable Specific Plan is not approved by the voters, the Specific Plan and all provisional approvals shall be automatically deemed disapproved.

#### **.060 Exceptions.**

- 1.) Remodeling, construction or reconstruction of a single building by individual property owners in R-1, R-1.5 or R-2 zoned parcels are not included in this Chapter.
- 2.) The provisions of this Chapter shall not apply to the extent that they would violate state or federal laws.
- 3.) This Chapter shall not be applied in a manner that would result in the unconstitutional taking of private property.
- 4.) This Chapter shall not apply to any Major or Minor Developments that have received all discretionary approvals prior to the Effective Date in Section .090 below.
- 5.) This Chapter does not apply to construction of public utilities or public transit facilities.
- 6.) This Chapter does not apply to affordable housing projects required by state or federal law.
- 7.) This Chapter does not apply to construction of public schools or hospitals.
- 8.) This Chapter does not apply to properties within the Newport Coast Statistical Area "N," described and shown on City of Newport Beach Statistical Areas Map dated March 2005 that remain subject to County of Orange municipal land use and permitting authority. This Chapter shall apply to properties within Statistical Area "N" for which responsibility for municipal land use and permitting responsibility has been transferred to the City of Newport Beach, except to the extent such application would cause the City to violate legal and/or contractual commitments regarding development of the properties.

#### **.070 Relationships to City Charter Section 423 and Municipal Code.**

- 1.) Should a conflict arise that cannot be reconciled, the provisions of Charter Section 423 shall prevail over this Chapter. The provisions of this Chapter shall supersede all conflicting provisions of the Municipal Code either existing or adopted in the future except those adopted by a vote of the people.
- 2.) If a Major Development Specific Plan proposal includes a related General Plan Amendment ("GPA") that requires a Charter Section 423 vote, the two may be combined into one ballot measure that will satisfy the requirements of this Chapter, provided that no other Development project or GPA is included as part of the same ballot measure.

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- 3.) Each Major Development Specific Plan not approved as part of a City Charter Section 423 vote shall require approval by the electorate under the terms of this Chapter notwithstanding previous voter approval of the General Plan Amendment.

**.080 Amendments.**

This Chapter shall not be amended or repealed except by a vote of the people.

**.090 Effective Date.**

If the voters at a scheduled election approve this Chapter, the effective date for purposes of this Chapter shall be retroactive to the date of the filing of the Notice of Intent to Circulate its enabling petition.

**.100 Definitions.**

**"As Built Condition"** refers to residential units, buildings, and traffic existing on the Application Date.

**"Application Date"** is the date a request for approval of a Development proposal is first submitted to the City.

**"Development"** is a discretionary "project" as defined in the California Environmental Quality Act (Public Resources Code § 21000 et seq.), the CEQA Guidelines, and relevant decisional law without regard to whether any environmental document is required for the project.

**"General Plan"** is the General Plan of the City of Newport Beach adopted on October 24, 1988 as subsequently amended and in force at the time of filing of the Notice of Intent to Circulate this Initiative.

**"Major Development"** is a proposed Development that would "Significantly Increase Traffic, Density or Intensity above the "As Built Condition" of a "Neighborhood".

**"Minor Development"** refers to all Developments that do not qualify as a Major Development.

**"Neighborhood"** is all property within 500 feet of any parcel or lot that is part of a Development proposal. If a portion of a legal lot or parcel is within 500 feet of a Development proposal, the entire lot or parcel shall be included in the neighborhood

**"Peak Hour Trips"** means the number of peak hour vehicle trips that would be generated by a proposed Development, as defined and calculated using the most recent version of the Trip Generation Manual of the Institute of Transportation Engineers ("TTE Manual") in effect on the Application Date of the Development.

**"Proponent"** is the Property owner and/or authorized applicant for a Development.

**"Significantly Increase"** means exceeding one or more of the following thresholds over the present As Built Condition of a Neighborhood: Traffic - over 100 additional Peak Hour Trips; Density - over 100 additional dwelling units; Intensity over 40,000 additional square feet of floor area. Intensity of a Development includes the square footage of all dwelling units and commercial buildings including hotels, timeshares, theaters if they are developed on the same property as any of these commercial land use categories. A Significant Increase occurs if a Development proposal on its own exceeds one of these thresholds or if the combination of a Minor Development proposal and other Minor Developments in the same Neighborhood that were approved within five years of the Application Date exceed one of the thresholds. "Other Minor Developments" shall not include those approved pursuant to this Chapter nor approved prior to the Effective Date of this Chapter.

**"Specific Plan"** for purposes of this Chapter means a specific plan or specific plan amendment that complies with Government Code section 65450 et seq. and this Chapter.

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(End of amendment. But the proposed ballot measure also includes the following "Second" through "Seventh":)

**Second. Findings.** (1.) The people of Newport Beach find that their quality of life and property values are severely impacted by excess development, with its overcrowding, traffic congestion and gridlock.

(2.) The City's street system has not kept up with the City's growth and traffic congestion has resulted. To prevent this situation, state law requires the land Use Element of the General Plan to be consistent with the Circulation Element. But this doesn't help, because land uses are built promptly, while the street system will be built in the future or never as it is subject to funding availability and community acceptance of over passes and wider roads.

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(3.) Traffic Engineers measure congestion in Intersection Capacity Utilization (ICU). The people find that any ICU over the current City standard of 0.9000 is unacceptable congestion. There are already six intersections in the City with ICU over 0.900.

(4.) The people, whose quality of life and Property Rights are at stake, should have the power to judge the merits of a proposed development. They should have the power to decide if a proposed Major Development is worth the congestion and density it will cause beyond that which can be accommodated by the Circulation Element as it exists at that time, including roadway projects that are funded and certain to be constructed within the following three years.

**Third. Implementation.** It is the intent of this Chapter of the City of Newport Beach Municipal Code that, to the maximum extent permitted by law, it be applied to all Major Development proposals that have not received final, discretionary approval as of its effective date. However, this Chapter shall not apply to a Development for which the Proponent has obtained a: (i) vested right pursuant to state law; (ii) final approval and execution of a Development Agreement authorized by the California Government Code; or (iii) approval of a vesting tentative map.

2. The City Council is encouraged to adopt guidelines to implement the foregoing Chapter following public notice and public hearing, provided that any such guidelines shall be consistent with this. Any such guidelines shall be adopted and amended only by the affirmative votes of not less than six members of the City Council.

3. All ballot measures required by this Chapter shall be worded such that a YES vote approves the Major Development Specific Plan and a NO vote rejects the Major Development Specific Plan, and any such election in which the ballot measure is not so worded shall be void and shall have no effect.

4. The ballot pamphlet describing the ballot measure shall contain both Pro and Con Arguments about the Measure and Rebuttals by both Pro and Con proponents if they so desire. The City Council is encouraged to select outside proponents and opponents of the measure to prepare arguments, instead of its own members.

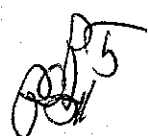
**Fourth. Defense.** The City shall vigorously defend this Chapter and its underlying initiative against any legal challenge.

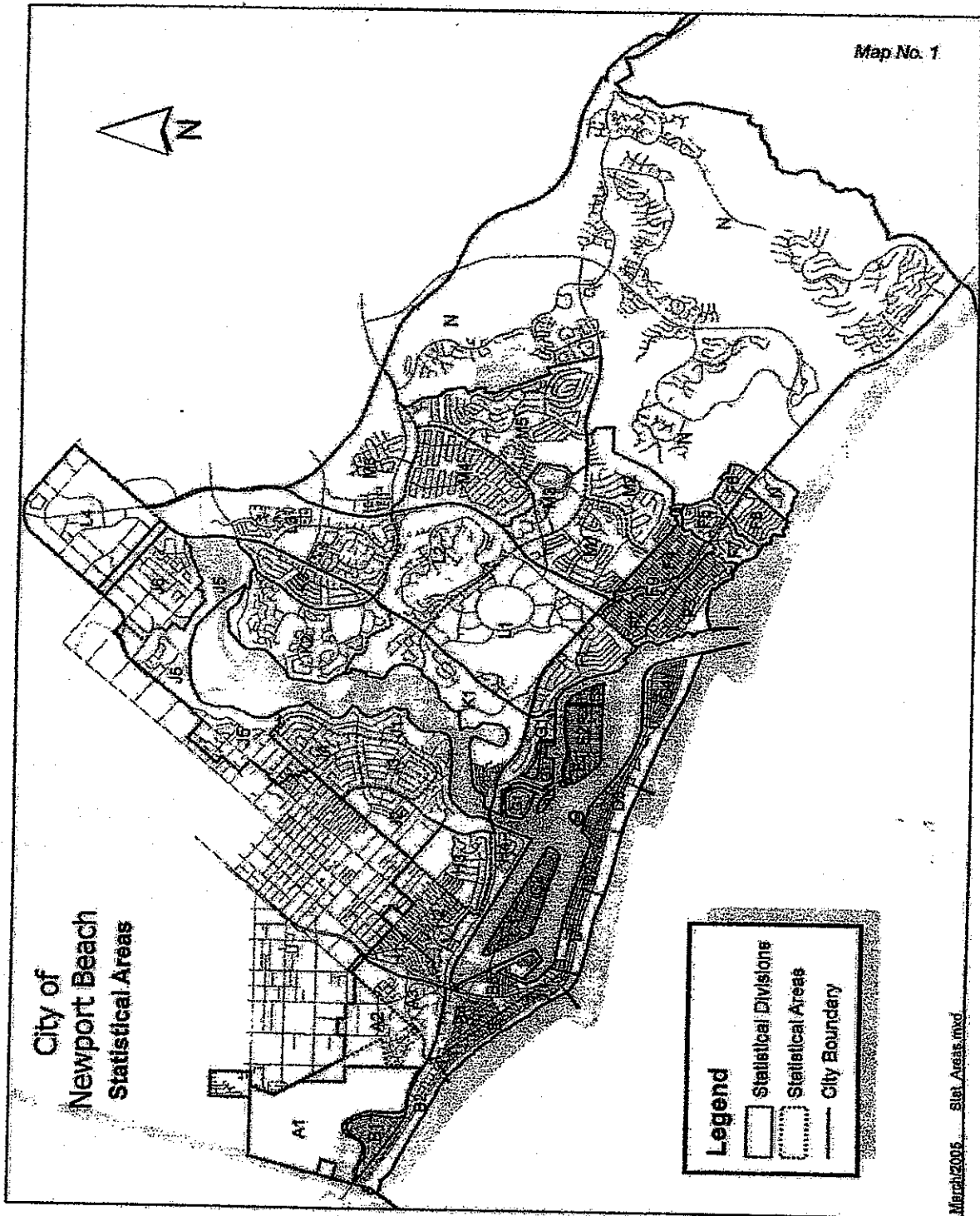
**Fifth. Special Election.** In the event that this Initiative is signed by 15% of the valid registered voters in the City of Newport Beach at the time of the filing of the notice of intent to circulate it, the City Council is requested to call a special election at the earliest date permitted by the State Election Code under these circumstances.

**Sixth. Construction.** Nothing herein shall be construed to make illegal any lawful use presently being made of any land in accordance with the land use regulations, in force at the time of filing of the Notice of Intent to Circulate Petition.

**Seventh. Severability.** If any part of this initiative is declared invalid on its face or as applied to a particular case, such decision shall not affect the validity of the remaining parts, or their application to other cases. It is hereby declared that each part of this initiative would have been adopted irrespective of the fact that any one or more other parts be declared invalid.

----- (End of proposed ballot measure.) -----





March 2005 Stat Areas.mxd

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VOTER APPROVAL FOR MAJOR DEVELOPMENTS OVER  
"AS BUILT CONDITION"  
OF CITY

This Measure would add a new chapter to the Newport Beach Municipal Code to require development proponents to prepare and obtain voter approval of a Specific Plan for all proposed "Major Developments". Major Development is defined as a proposed discretionary project that would increase traffic over a hundred additional peak hour trips, add over a hundred dwelling units or add over forty thousand square feet of floor area, including residential dwelling units, if the residential units are developed on the same property as commercial buildings. These thresholds are considered to "Significantly increase Traffic, Density or Intensity" above the "As Built Condition of a Neighborhood" in terms of residential units, buildings and traffic existing on the date a development application is first submitted to the City.

Voter approval would also be required for a "Minor Development" proposal that does not exceed one of the thresholds, but which, in combination with other Minor Developments in the same neighborhood, approved within five years of the application date, exceeds one of the thresholds. A "neighborhood" is defined to include all property within five hundred feet of any parcel that is part of a development proposal.

Before a Major Development proposal may be submitted to the voters, the proponent must first receive approval of a Specific Plan as required by state law and additional requirements contained in the Measure. Each Major Development Specific Plan must be submitted to a vote as a separate and distinct ballot measure at an election next following the City Council approval or a special election with costs shared by the City and proponent.

The Measure provides that Charter Section 423 prevails over the Measure's provisions, but that the Measure supersedes all conflicting provisions of the Municipal Code existing or adopted in the future except those adopted by a vote of the people. The Measure applies to all Major Development proposals with an application date after November 9, 2005, or without final discretionary approval as of November 9, 2005, but not to development with certain vested rights or approvals described in the Measure.

The Measure contains findings regarding the adverse impact of excess development and an inadequate street system and provisions for implementation of the measure. There are eight Exceptions to the Measure's provisions. If the Measure is approved by the voters, it is intended to become effective retroactive to November 9, 2005.